

LUNDGRENS

The Danish Tax Appeals Agency
Ved Vesterport 6, 4th floor
1606 Copenhagen V, Denmark

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3 August 2018

Dear Sirs

GOLDSTEIN LAW GROUP PC 401K PROFIT SHARING PLAN

On behalf of our client, Goldstein Law Group PC 401K Profit Sharing Plan, we hereby appeal the decision delivered by SKAT on 4 May 2018. The decision is produced as **Exhibit 1**.

In the appeal to the Tax Appeals Agency, we enter the following claim:

CLAIM

THAT SKAT's decision of 4 May 2018 be amended to the effect that SKAT's previous decisions on dividend tax refunds to the Appellant for a total of DKK 9,521,280 be affirmed.

STATEMENT OF FACTS

The Appellant was formed on 1 January 1999 and is a US pension plan which is tax exempt according to internal US rules and exempt from the liability to pay withholding tax on dividends from Denmark under the DK-US double taxation convention.

In the period from 2014 to 2015, the Appellant made investments in Danish shares and in that connection received dividends on those shares. In connection with the payment of those dividends, dividend tax was withheld on the dividends. Subsequently, the Appellant regularly claimed refunds of such dividend tax, and SKAT granted the refunds.

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This case concerns the fact that, by the decision under appeal, SKAT has now revoked those previous decisions in which SKAT acknowledged that the Appellant was entitled to the dividend tax refunds.

1. Background to investments

Goldstein Law Group PC 401K Profit Sharing Plan ("Goldstein") was established on 1 January 1999. Since its establishment, Goldstein has made a large number of investments in both US and foreign (non-US) securities, financial products and contracts, etc.

In 2014 – 15 years after its establishment – the Appellant started taking an interest in Danish shares. After looking into the market conditions of investments in Danish shares, the Appellant decided to add the investments in question to the portfolio of investments the Appellant was already making under the auspices of the brokerage company ED&F Man Capital Markets Limited.

ED&F Man Capital Markets Limited, which is part of the ED&F Man Group, is a large and well-reputed global financial brokerage company, which is authorised and subject to supervision by the Financial Conduct Authority ("FCA") (194926). The company's office address is 3 London Bridge Street, London, SE1 9SG, United Kingdom, and it is registered in the UK under company registration number 1292851 (equivalent to a Danish CVR number).

ED&F Man Group was established in 1783, and today has about 6,000 employees in 60 countries.

In connection with the cooperation between the Appellant and ED&F Man Capital Markets Limited, a number of framework agreements were concluded which formed the basis of the parties' cooperation and the investments which the Appellant decided to make in the subsequent years.

The Appellant has no – and never has had any – overlap of interests with ED&F Man Capital Market Ltd.

For a better understanding of the general services provided by ED&F Man Capital Markets Ltd., reference is made to the company's website, according to which:

"We provide fixed income, equity and commodity exchange-traded funds and source liquidity for listed and OTC block trades. We help customers from banks to hedge and real money funds with algorithmic trading strategies and voice, electronic, chat, and FIX staged access."

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"We provide equity crossing in pan-European, Asian, US and Canadian equities. With a client base across Europe, North America and Asia-Pacific, we can quickly execute over-the-counter or on-exchange trades. We also offer execution and clearing of ICE and Eurex single stock futures and options."

"We provide clearing and settlement for equities and fixed-income securities. We offer global services for on-exchange securities deals and settlement, and custodian services for on-exchange and over-the-counter transactions. We can provide a full list of markets covered on request."

"We provide specialized securities lending and financing services to hedge funds and proprietary trading firms."

As can be seen above, ED&F Man Capital Markets Ltd. offers a wide range of different investment opportunities to its customers in all types of securities, etc.

2. The investments made

As mentioned above, the Appellant was established on 1 January 1999, and since then the company has engaged in financial investments, including through ED&F Man Capital Markets Limited.

In 2014, investments in Danish shares were recommended to the Appellant – among other things because the Appellant, as a US pension plan, is entitled to a 100% refund of Danish dividend tax withheld at source.

Against that background, the Appellant made a total of eight transactions in Danish listed shares in 2014 and 2015. Dividends were distributed on all of the shares, and the usual dividend tax was withheld at source, and subsequently the Appellant claimed dividend tax refunds.

As already mentioned, the Appellant has invested in securities in a great number of countries over a number of years. To avoid having to familiarise itself with the refund procedure in each individual country, over the years the Appellant has contracted with various professional service providers to handle the practical side of claiming dividend tax refunds pursuant to the rules applicable to investments in the relevant country.

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After 2012 when the Appellant started investing through ED&F Man Capital Markets Limited, the Appellant was introduced to Goal TaxBack, a business partner of ED&F Man Capital Markets Limited's. Goal TaxBack provides the service of claiming dividend tax refunds for foreign investors.

As a result of the above, the Appellant issued a power of attorney to Goal TaxBack to allow them to claim a refund of the dividend tax withheld. **Exhibit 2** is the power of attorney that was issued for this purpose.

For purposes of claiming the dividend tax refund on the Appellant's behalf, Goal TaxBack submitted a claim for a refund of the dividend tax withheld.

Exhibit 3 is a claim form completed by Goal TaxBack (Form 06.003 (ENG)), providing all of the details requested by SKAT – then and now – in order to decide whether to grant a dividend tax refund. The claim form submitted by Goal TaxBack was accompanied by the following documents:

- A tax voucher, which serves as documentation of the dividends distributed as well as the dividend tax withheld.
- A so-called "certificate of residency", which is to serve as documentation that the person (natural or legal) claiming the dividend tax refund is tax resident in the country with which Denmark has concluded a double taxation convention authorising such person to claim dividend tax refunds.

The certificate of residency (Form 6166) issued by the US Department of the Treasury is produced as **Exhibit 4**. According to the certificate, the Appellant is a pension plan which is tax resident in the USA and exempt from US tax liability. Apart from serving as documentation that the Appellant is tax resident in the USA, the certificate also establishes that the Appellant is a US pension plan, and the Appellant is therefore entitled to a 100% dividend tax refund under article 10(3) of the DK-US double taxation convention.

It is emphasised that Form 6166 is a standard form used by the US Department of the Treasury as documentation in connection with dividend tax refund claims under all double taxation conventions concluded by the USA. Consequently, this is not a form that has been prepared specifically for the Appellant or specifically for dividend tax refund claims in respect of Danish shares.

On the basis of those documents, Goal TaxBack claimed a refund of the dividend tax withheld in respect of the shares owned by the Appellant at the time of distribution.

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After SKAT's examination of the above material, SKAT decided to refund the tax withheld as the Appellant was entitled to a 100% dividend tax refund under the DK-US double taxation convention.

SUBMISSIONS

In support of the claim made, it is submitted on an overall basis that the Appellant was the beneficial owner of the shares in question at the time when the dividends were declared.

Under Danish law, it is the owner of the shares at 23:59:59 on the day when the dividends were declared by the general meeting who is deemed to be the beneficial owner of the dividends distributed and thus also the party who is entitled to claim a refund of the Danish dividend tax paid in respect of the shares.

The Appellant is a lawfully established and registered pension plan under the DK-US double taxation convention. Documentation has been produced to establish that the Appellant is tax resident in the USA, but exempt from US tax liability, see Exhibit 4.

The Appellant has received documentation from ED&F Man Capital Market Limited of having owned and been in possession of the shares in question at the time when the dividends were declared by the company.

In addition, the Appellant has received documentation of having received the dividends less the dividend tax withheld. Thus, the Appellant has also received documentation showing that Danish dividend tax was actually withheld on the dividends in question.

The Appellant thus satisfies the conditions for a dividend tax refund, see article 10 of the DK-US double taxation convention.

Accordingly, the Appellant was entitled to receive the dividend tax refunds and SKAT was therefore not entitled to revoke its previous favourable administrative act by the decision under appeal.

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In its decision, SKAT states on page 2 that, in SKAT's opinion, the Appellant's refund claims were supposedly fraudulent, and it can also be seen that SKAT has reported this – and apparently other – cases to the State Prosecutor for Serious Economic and International Crime as a result of its suspicion that the Appellant allegedly did not own the shares underlying the refund claims and as a result of its suspicion that the Appellant allegedly did not receive the actual dividends distributed by the company.

Basically, those allegations seem quite detached from the facts in this case.

Moreover, those allegations are in conflict with the documentation received by the Appellant from ED&F Man Capital Market Limited, and the Appellant is thus unable to recognise SKAT's version of events.

The Appellant has made usual investments in Danish shares. All of these investments – including the ownership and receipt of dividends – have given rise to usual registrations and entries in the Appellant's account with a large international well-reputed investment company which is subject to supervision by the UK financial supervisory authorities.

The documentation submitted with the claim form is and was quite usual and also fully adequate documentation of both ownership and cash flows. The documentation in question fully corresponds to the documentation which SKAT continues to recommend claimants to submit with their dividend tax refund claims, and the documentation fully corresponds to the documentation required by SKAT over many years of established practice.

At no time has the Appellant had any basis for questioning the validity of the documentation received by the Appellant from ED&F Man Capital Market Ltd., and the Appellant still has no basis for questioning the genuineness of the entries and registrations which form part of the records from ED&F Man Capital Market Ltd.

PROCEDURAL ISSUES

We request the opportunity to argue our case at an office meeting before a statement of facts is prepared in the matter. In addition, we request that this appeal be heard by the National Tax Tribunal.

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We reserve the right to request an oral hearing to argue our case before the Tribunal. Today, the appeal fee of DKK 400 has been transferred to the Tax Appeal Agency's account, registration number 0216 and account number 4069029361, quoting the Appellant's name and FormID.

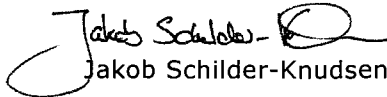
Yours faithfully

Lundgrens Advokatpartnerselskab



Nicolai B. Sørensen

Attorney (right of audience before
the Danish Supreme Court), Partner



Jakob Schilder-Knudsen

Attorney, Partner

ATTESTATION

I, the undersigned, Annette Jon Rasmussen,
Qualified Translator and Interpreter in the Danish and English languages,
hereby attest the preceding text to be a true and faithful translation of
the attached document in Danish produced to me this 17th day of August 2018.

Witness my hand and official seal



Annette Jon Rasmussen, Qualified Translator and Interpreter (Danish and English)
Member of *Danske Translatører* (Danish Authorised Translators and Interpreters), a member
organisation of FIT (Federation of International Translators)

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3. august 2018

GOLDSTEIN LAW GROUP PC 401K PROFIT SHARING PLAN

På vegne vores klient, Goldstein Law Group PC 401K Profit Sharing Plan skal vi hermed påklage den af SKAT afsagte afgørelse af 4. maj 2018. Afgørelsen fremlægges som **bilag 1**.

For Skatteankestyrelsen nedlægges følgende

PÅSTAND

SKAT's afgørelse af 4. maj 2018 ændres, således at SKAT's tidligere afgørelser om refusion af udbytteskatter til klager på i alt DKK 9.521.280 stadfæstes.

SAGSFREMSTILLING

Klager blev stiftet 1. januar 1999 og er en amerikansk pensions plan, der efter interne amerikanske regler er fritaget for skattepligt og som efter dobbeltbeskatningsoverenskomsten mellem Danmark og USA er undtaget for betaling af kildeskat på udbytteudlodninger fra Danmark.

Klager har i perioden fra 2014 til 2015 foretaget investeringer i danske aktier og har i den forbindelse modtaget udbytter af disse aktier. I forbindelse med udbetalingen af disse udbytter er der blevet indeholdt kildeskat på udbyttebetalingen. Klager har efterfølgende løbende søgt disse indeholdte udbytteskatter udbetalt, hvilket SKAT har godkendt.

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Nærværende sag omhandler det forhold, at SKAT i den påklagede afgørelse nu har tilbagekaldt disse tidligere afgørelser, hvorved SKAT anerkendte klagers ret til at få udbetalt indeholdte udbytteskatter.

1. Baggrunden for investeringerne

Goldstein Law Group PC 401K Profit Sharing Plan (Goldstein) blev stiftet 1. januar 1999. Goldstein har siden stiftelsen foretaget en lang række investeringer i både amerikanske og udenlandske (ikke-amerikanske) værdipapirer, finansielle produkter og kontrakter m.m.

I 2014 – 15 år efter stiftelsen - begyndte klager at orientere sig imod investeringer i danske aktier. Efter at have undersøgt de markedsmæssige betingelser for aktieinvesteringer i danske aktier valgte klager at tilføje de omhandlede investeringer til den portefølje af investeringer, som klager i forvejen foretog i regi af brokerselskabet ED&F Man Capital Markets Limited.

ED&F Man Capital Markets Limited, der er en del af ED&F Man Group, er et stort og velrenommeret globalt finansielt broker-selskab, autoriseret og reguleret af Financial Conduct Authority ("FCA") (194926). Selskabet har kontoradresse på 3 London Bridge Street, London, SE1 9SG og er registreret i England med et svarende til dansk CVR.nr. 1292851.

ED&F Man Group blev etableret i 1783 og beskæftiger i dag omkring 6.000 ansatte i 60 lande.

I forbindelse med samarbejdet mellem klager og ED&F Man Capital Markets Limited blev der indgået en række ramme-aftaler, som dannede grundlag for samarbejdet og de investeringer, klager valgte at foretage i de efterfølgende år.

Klager har ikke - og har aldrig haft - nogen sammenfaldende interesser med ED&F Man Capital Market Ltd.

For at få en bedre forståelse af ED&F Man Capital Markets Ltd. almindelige serviceydelser kan henvises til selskabets hjemmeside, hvor der blandt andet anføres følgende:

"We provide fixed income, equity and commodity exchange-traded funds and source liquidity for listed and OTC block trades. We help customers from banks to hedge and real money funds with algorithmic trading strategies and voice, electronic, chat, and FIX staged access."

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"We provide equity crossing in pan-European, Asian, US and Canadian equities. With a client base across Europe, North America and Asia-Pacific, we can quickly execute over-the-counter or on-exchange trades. We also offer execution and clearing of ICE and Eurex single stock futures and options."

"We provide clearing and settlement for equities and fixed-income securities. We offer global services for on-exchange securities deals and settlement, and custodian services for on-exchange and over-the-counter transactions. We can provide a full list of markets covered on request."

"We provide specialized securities lending and financing services to hedge funds and proprietary trading firms."

Som det fremgår af ovenstående, tilbyder ED&F Man Capital Markets Ltd. sine kunder en bred vifte af forskellige investeringsmuligheder i alle former for værdipapirer mm.

2. De foretagne investeringer

Som nævnt ovenfor, blev klager stiftet 1. januar 1999 og har siden da foretaget finansielle investeringer, herunder hos ED&F Man Capital Market Limited.

I 2014 blev klager anbefalet at investere i danske aktier – blandt andet som en følge af, at klager som amerikansk pensions plan har ret til 100% refusion af dansk indeholdt kildeskat på udbytter.

På den baggrund foretog klager i 2014 og 2015 samlet 8 handler i danske børsnoterede aktier, som alle gav udbytte, hvor der blev indeholdt sædvanlig kildeskat på udbyttet, og hvor den indeholdte udbytteskat efterfølgende blev tilbagesøgt af klager.

Som nævnt har klager igennem mange år foretaget investeringer i værdipapirer i en række forskellige lande. For ikke at skulle sætte sig ind i tilbagesøgningsproceduren i hvert enkelt land, har klager gennem flere år anvendt forskellige professionelle serviceudbydere til at stå for den praktiske tilbagesøgning af indeholdt kildeskat efter de regler, der gælder for investeringer i det pågældende land.

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Efter at klager i 2012 begyndte at investere gennem ED&F Man Capital Markets Limited, blev klager introduceret for Goal TaxBack, som ED&F Man Capital Markets Ltd. havde et samarbejde med. Goal TaxBack udbyder den service at tilbagesøge indeholdt udbytteskat for udenlandske investorer.

Som følge af disse forhold udstedte klager fuldmagt til Goal TaxBack med henblik på at Goal TaxBack kunne tilbagesøge den indeholdte kildeskat. Som **bilag 2** fremlægges den fuldmagt, der blev udstedt til brug herfor.

I forbindelse med tilbagesøgningen af indeholdt kildeskat indsendte Goal TaxBack, på vegne af klager, en anmodning om refusion af den indeholdte udbytteskat.

Som **bilag 3** fremlægges en af Goal TaxBack udfyldt tilbagesøgningsblanket (Form 06.003 (ENG)), af hvilken fremgår samtlige de informationer, som SKAT – dengang som nu – efterspørger for at kunne træffe beslutning om refusion af den indeholdte udbytteskat. Anmodningen fra Goal TaxBack indeholdt således følgende dokumenter:

- En udbytteerklæring (Tax Voucher), der dokumenterer dels udbytteudlodningen, dels den indeholdte udbytteskat.
- En såkaldt "Hjemstedserklæring", der skal dokumentere, at den person (fysisk eller juridisk) der tilbagesøger udbytteskatten, er skattemæssigt hjemmehørende i det land, med hvem Danmark har indgået en dobbeltbeskatningsoverenskomst, der giver hjemmel til at tilbagesøge indeholdte kildeskatter på udbytter.

Denne "hjemstedserklæring" ("Form 6166") udstedt af det amerikanske Finansministerium, fremlægges som **bilag 4**. Det fremgår heraf, at klager er en pensionsplan, der er skattemæssigt hjemmehørende i USA og som er undtaget fra amerikansk skattepligt. Udover at dokumentere, at klager er skattemæssigt hjemmehørende i USA, dokumenterer erklæringen ligeledes, at klager er en amerikansk pensions plan, hvorfor klager efter artikel 10 (3) i den dansk-amerikanske dobbeltbeskatningsoverenskomst er berettiget til at få refunderet hele den indeholdte udbytteskat.

Det skal understreges, at denne Form 6166 er en standardform, som det amerikanske finansministerium anvender som dokumentation for tilbagesøgning af indeholdt udbytteskat i henhold til alle dobbeltbeskatningsoverenskomster, som USA har indgået. Der er således ikke tale om en blanket der er udarbejdet særligt til klager, eller særligt til tilbagesøgning af udbytteskat fra danske aktier.

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På baggrund af disse dokumenter tilbagesøgte Goal TaxBack den kildeskat, der var blevet indeholdt på den udlodning, der var sket på de aktier, klager ejede på udlodningstidspunktet.

Efter SKAT's gennemgang af ovenstående materiale traf SKAT beslutning om at udbetale den indeholdte kildeskat, idet klager iht. dobbeltbeskatningsoverenskomsten mellem USA og Danmark var berettiget til at få udbetalt 100 % af den indeholdte kildeskat.

ANBRINGENDER

Til støtte for den nedlagte påstand gøres det overordnet gældende, at klager har været retmæssig ejer (beneficial owner) af de omhandlede aktier på tidspunktet for vedtagelsen af udbytteudlodninger.

Efter danske regler er det ejeren af aktierne kl. 23:59:59 på dagen for generalforsamlingens vedtagelse at udbytteudlodningen, der anses for at være den retmæssige ejer af det udloddede udbytte, og dermed også den der er berettiget til at tilbagesøge den indeholdte danske udbytteskat på aktierne.

Klager er en lovformeligt stiftet og registreret pension plan i medfør af dobbeltbeskatningsoverenskomsten mellem USA og Danmark. Der foreligger dokumentation for, at klager er skattemæssigt hjemmehørende USA men er undtaget fra amerikansk skattepligt, jf. bilag 4.

Klager har modtaget dokumentation fra ED&F Man Capital Market Limited på at have ejet og været i besiddelse af de omhandlede aktier på tidspunktet for vedtagelsen af udbytteudlodning fra det udloddende selskab.

Klager har yderligere modtaget dokumentation for at have modtaget selve udbytteudlodningen eksklusiv indeholdt kildeskat. Således har klager også modtaget dokumentation for, at der på den pågældende udbytteudlodning faktisk har været indeholdt dansk kildeskat.

Klager opfylder således betingelserne for at få refunderet den indeholdte kildeskat, jf. dobbeltbeskatningsoverenskomsten mellem USA og Danmark artikel 10.

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Klager har således været berettiget til at modtage refusion af den indeholdte kildeskat på udbytteudlodningerne, og det er derfor med urette, at SKAT ved den påklagede afgørelse tilbagekaldt sin tidligere begunstigende forvaltningsakt.

SKAT har i kendelsen p. 2 oplyst, at det er SKAT's opfattelse, at refusionerne til klager skulle være formodet svindel, og det fremgår ligeledes, at SKAT har anmeldt denne – og tilsyneladende andre – sager til SØIK som følge af en mistanke om, at klager ikke skulle have ejet de aktier, som ligger til grund for tilbagesøgningerne, og som følge af en mistanke om, at klager ikke skulle have modtaget selve udbytteudlodningen fra det udloddende selskab.

Helt grundlæggende synes disse påstande ganske løsrevet fra sagens faktiske omstændigheder.

Yderligere er disse påstande i strid med den dokumentation, som klager har modtaget fra ED&F Man Capital Market Limited, og klager kan derfor ikke genkende det billede, SKAT tegner ved denne beskrivelse.

Klager har foretaget sædvanlige investeringer i danske aktier. Samtlige disse investeringer – herunder ejerskabet og modtagelsen af udbytteudlodningerne - har udmøntet sig i helt sædvanlige registreringer og posteringer på klagers konto i et internationalt stort anerkendt investeringsfirma, der er underlagt kontrol af de britiske finansmyndigheder.

Den dokumentation, der er fremlagt med tilbagesøgningsblanketten er og var helt sædvanlig og også fuldt tilstrækkelig dokumentation for både ejerskab og pengestrømme. Den omhandlede dokumentation svarer ganske til den dokumentation, SKAT fortsat anbefaler man vedlægger sin anmodning om refusion af indeholdte kildeskatte, og dokumentationen svarer ganske til den dokumentation, SKAT har krævet gennem mange års fast praksis.

Klager har på intet tidspunkt haft grundlag for at betvivle validiteten af den dokumentation, klager har modtaget fra ED&F Man Capital Market Ltd., og klager har fortsat intet belæg for at betvivle, at de posteringer og registreringer, der fremgår af materialet fra ED&F Man Capital Market Ltd. ikke skulle være korrekte.

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PROCESSUELLE FORHOLD

Vi skal venligst anmode om kontorforhandling, forinden der udarbejdes sagsfremstilling i sagen. Yderligere skal vi venligst anmode om, at nærværende klage behandles af Landsskatteretten.

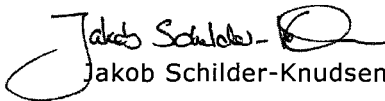
Adgang til retsmøde forbeholdes. Klagegebyr stort kr. 400 er d.d. overført til Skatteankestyrelsens konto reg. nr. 0216, konto nr. 4069029361 med henvisning til Klagers navn og BlanketID.

Med venlig hilsen

Lundgrens Advokatpartnerselskab



Nicolai B. Sørensen
Advokat (H), Partner



Jakob Schilder-Knudsen
Advokat, Partner